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Calendar No. 765

101st CONGRESS *2d Session*	SENATE	REPORT 101-414

FISHERY CONSERVATION AMENDMENTS OF 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

OF THE

SENATE COMMITTEE ON COMMERCE SCIENCE, AND TRANSPORTATION

ON

S. 1025

AUGUST 2 (legislative day, JULY 10), 1990.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

39-010

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101ST CONGRESS
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SENATE

REPORT
101-414

FISHERY CONSERVATION AMENDMENTS OF 1990

AUGUST 2 (legislative day, JULY 10), 1990.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1025]

The Committee on Commerce, Science, and Transportation to which was referred the bill (S. 1025) to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act for fiscal years 1990, 1991, and 1992, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the bill and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of S. 1025, as reported, is to improve conservation and management of U.S. marine fishery resources. The legislation authorizes appropriations through fiscal year (FY) 1995 for the following fishery statutes: the Magnuson Fishery Conservation and Management Act (Magnuson Act); the Atlantic Tunas Convention Act of 1975 (ATCA); the Anadromous Fish Conservation Act; the Interjurisdictional Fisheries Act of 1986; and the Central, Western, and South Pacific Fisheries Development Act. S. 1025 also makes a number of changes to the Magnuson Act, including amendments to extend the management authority of that Act to cover tuna species, restrict the use of driftnets, modify requirements for appointment to the regional fishery management councils, authorize and establish guidelines for a North Pacific fisheries research program, and provide for a temporary moratorium on new entrants to a fishery to prevent overfishing. Finally, the bill amends ATCA and the Fishermen's Protective Act of 1967.

Background and Needs

The Magnuson Act was enacted in 1976 to halt the devastation of U.S. fishery resources by foreign fishermen. In the decade preceding enactment, catches by foreign vessels off the coastline of the United States more than doubled and led to the overfishing of fish stocks such as haddock, halibut, herring, and yellowtail flounder. By contrast, the U.S. fishing industry showed little growth, and commercial harvests were static at just over 2,000,000 metric tons each year.

Through the Magnuson Act, the United States has asserted sovereign rights and exclusive management authority over all living marine resources, except for tuna, within our 200-mile exclusive economic zone (EEZ). In addition, the Magnuson Act extended jurisdiction over salmon of U.S. origin throughout their migratory range. The Magnuson Act has provided a national framework for conserving and managing the wealth of fishery resources found within the coastal waters of the United States. Its goals have been: (1) to establish sound conservation and management practices; (2) to restrict foreign access to U.S. fishery resources; and (3) to encourage the development of the domestic fishing industry.

To allow broad-based participation in the management process, the Magnuson Act created eight regional fishery management councils (Councils). Each Council is comprised of State and Federal officials and interested fishing industry, sportfishing, academic, and environmental representatives. The primary responsibility of the Councils is the development of fishery management plans for important fishery resources. National conservation and management standards are established in the Magnuson Act, and these standards must be met in developing the fishery management plans. For each fishery, the plans set the optimum yields to be harvested annually, the total allowable level of foreign fishing, and the rules governing the harvesting and landing of fishery resources by both U.S. and foreign fishermen.

The Secretary of Commerce (Secretary), through the National Oceanic and Atmospheric Administration (NOAA), administers the Magnuson Act and has responsibility for reviewing and approving each fishery management plan prepared by the Councils. The Secretary of State, in consultation with the Secretary, is responsible for allocating any surplus fish not harvested by U.S. fisherman among foreign nations and for negotiating international fishery agreements.

Aughorization of appropriations for the Magnuson Act expired at the end of FY 1989. The authorized funding level for FY 1989 was $75,000,000. The table below shows amounts appropriated in FY 1989 and FY 1990. The Administration's budget request for FY 1991 is also provided:

[Dollars in millions]

	Fiscal year—		
	1989	1990	1991
Information collection & analysis	$49.46	$53.56	$55.67
Conservation & management	14.53	14.92	14.59
[Council operations]	[7.23]	[7.23]	[7.23]
Enforcement	4.47	6.00	6.20
Fishery development	2.70	2.69	2.76
Total	71.16	77.17	79.22

For FY 1991, the Administrator has requested a budget increase of 2.5 percent for NOAA activities authorized under the Magnuson Act. However, the budget request would shift allocation of fiscal resources among those NOAA activities. The Administration proposes to transfer $4,000,000 from fishery laboratory operations and $871,000 from management of Hawaiian and New England fishery stocks to research and monitoring of fisheries in the North Pacific, including high seas driftnet operations. In addition, an increase of $1,700,000 is requested to modernize computer equipment and improve fisheries information management.

MANAGEMENT OF HIGHLY MIGRATORY SPECIES

Several marine fish species, including tunas, swordfish, marlins, sail-fishes and pegalic sharks, migrate through broad oceanic expanses and traverse the coastal waters of many nations. Of these "highly migratory species", tuna stocks in particular support major fisheries and are among the most highly valued of marine resources. Over the last 2 decades, landings of commercially important tuna species (albacore, bigeye, bluefin, skipjack, and yellowfin) have increased about 6 percent each year, and world tuna fleets have continued to grow in size and capacity.

Our distant water tuna fleet supports one of the largest and most important fishery-based industries in the United States. Tuna fishing and canning operations presently employ about 20,000 people in the United States. In 1989, Americans ate almost 700,000,000 pounds of canned tuna, worth over $1,000,000,000. During the same period, the U.S. fleet landed 541,000,000 pounds of tuna with an ex-vessel value fo $309,000,000. Approximately 90 percent by weight of the U.S. tuna catch comes from foreign or international waters.

In addition to the distant water fleet, U.S. fishermen have focused increasing effort on tuna resources within our EEZ. About 500 longline vessels currently fish for tuna along the Gulf and Atlantic coasts. In the Western Pacific, the size of the longline fleet has doubled in less than 2 years, and now numbers over 100 vessels. While catches in the EEZ are relatively small, the fish command a high price, and this sector of the fishery now harvests almost 26 percent of the total value of U.S. tuna landings. In addition, the tuna longline fleet catches significant quantities of swordfish.

Due to the nomadic nature of the fish, efforts to conserve and manage highly migratory species require a high degree of international cooperation and coordination if they are to be effective. The

longstanding U.S. policy has been to negotiate international agreements for managing and securing access for U.S. fishermen to highly migratory stocks, particularly tuna. Using the rationale that such agreements provide the sole basis for effective management, the United States presently does not claim or recognize jurisdiction over tuna beyond the territorial sea. Consistent with that policy, tuna species were specifically excluded from the management authority of the Magnuson Act when it was enacted in 1976.

The tuna exclusion has been a source of continued discussion since that time. In contrast to the United States, almost all other nations claim jurisdiction over all fishery resources, including tuna, within their EEZs. Opponents of the tuna exclusion argue that recognition of coastal nation authority over tuna is not necessarily incompatible with international management strategies. They suggest that a change in the U.S. tuna policy would improve international relations and allow more effective fishery management within the U.S. EEZ.

A primary concern is that the tuna exclusion has hampered conservation and management of other species that are under Magnuson Act authority. In 1985, for example, the five East Coast Councils submitted a fishery management plan for swordfish to the Secretary. The plan objective was to reduce harvests of undersize swordfish through seasonal fishery closures. The plan also proposed limits on swordfish bycatches for the tuna longline fishery, and a ban on fishing at night during a closure. The Secretary initially disapproved both the cap on bycatch and the night-fishing prohibition because the measures restricted tuna fishing. However, in 1986 the Councils resubmitted the disapproved measures, and the Secretary approved the prohibition on nighttime longlining. On July 2, 1986, the Japan Tuna Association filed a law suit contending that the prohibition was invalid because it did not allow its members a reasonable opportunity to fish for tuna. Subsequently, provisions of the swordfish plan have never been implemented.

In the absence of a coordinated management effort, the fishing effort has remained high, and swordfish populations have dropped. Recent estimates indicate that fishing reductions of up to 78 percent may be necessary to halt further stock declines. While scientists, managers, and fishermen disagree about the seriousness of the overfishing problem, there is consensus that the delay in implementing a swordfish plan has contributed to it. Under these circumstances, the U.S. tuna policy appears to have been a factor in reducing the effectiveness of swordfish management efforts.

With respect to the Western Pacific, the need for authority to manage tuna in our EEZ also has been raised. Tuna is the most abundant species in the region and dominates commercial landings on the American islands in the Pacific. During 1987 and 1988, tuna accounted for nearly two-thirds of the total weight of commercial landings made by local fishermen. The Pacific Basin Development Council and other regional organizations have suggested that management authority is necessary to address the impact of increased fishing effort, both on local fishermen and on stocks of tuna and other species in the region.

Yet another concern regarding management of highly migratory species is that the Council system is not designed to regulate effec-

tively fisheries that span several Council regions. The system established in the Magnuson Act focuses more on the need to balance fishing interests within a Council region than it does on the need to achieve consensus among several Councils for management decisions. The Magnuson Act contains few provisions to support efficient inter-Council decisionmaking. Along the East Coast, for example, five Councils (New England, Mid Atlantic, South Atlantic, Gulf, and Carribean) share responsibility for managing the billfish fishery. Dozens of Council members were involved in developing the billfish management plan, and almost a decade was required to complete it.

In the case of swordfish, differing Council viewpoints also have contributed to management delays. At present, two disparate approaches to regulating swordfish harvests are being considered as a result of competing amendments to the swordfish plan that were developed by the South Atlantic and New England Councils. These Council differences must be resolved before fishery management measures can be implemented. Establishment of more efficient procedures is needed to encourage timely management decisions for fish and fisheries that span several Council regions.

HIGH SEAS DRIFTNET FISHERIES

Pelagic driftnets are modified gillnets which consist of a panel or series of linked panels of plastic webbing over one and one-half miles in length, suspended vertically in the water by floats at the top of the panel and weights at the bottom. The nets are permitted to drift with the wind and currents, and create a webbing curtain through which nothing larger than the opening in the mesh can pass. In the past 3 decades use of long driftnets, often up to 30 miles in length, has grown extensively. Today more than 1,000 vessels from Japan, Korea, and Taiwan are found in the North Pacific Ocean, and many of these vessels fish in other parts of the world as well.

Although driftnet fisheries are intended to target on a specific species, such as squid, the nets are not selective. As a result, seabirds, marine mammals, and non-target fish species also become entangled in the net and die. In addition, about 600 miles of nets are thought to be lost or discarded from these fisheries annually. The net fragments may continue to "ghost fish" (that is, they continue to catch fish even after they are lost or discarded) in the ocean for years due to the durability of the plastic netting. Finally, about 30–50 percent of the catch is estimated to be lost when fish ensnared in the driftnets die and drop out of the nets before they are retrieved by the fishermen.

The North Pacific driftnet fisheries have been a matter of concern to the United States since Japan initiated a salmon driftnet fishery more than 30 years ago. In 1953, the International North Pacific Fisheries Commission was established by international treaty to attempt to regulate this fishery and to ensure the protection of North American salmon stocks. In 1988, Japan had a fleet of approximately 1,200 vessels which use driftnets to catch salmon, squid, billfish, pomfret, and albacore. In addition, Taiwan conducts a squid driftnet fishery involving approximately 165 vessels, and

the Republic of Korea operates about 147 driftnet vessels. The length of nets generally ranges from 7 to 30 miles, and the total amount of netting which is set is quite large. Estimates indicate that over 30,000 miles of nets may be deployed each night during the fishing season for a total of more than 1,000,000 miles each year.

Driftnets are suspected of having major impacts on the living marine resources of the Pacific. The nets have been blamed for the interception of large numbers of American-origin salmon in the North Pacific and for serious overfishing of albacore tuna stocks in the South Pacific. The potential value of salmon harvests lost to U.S. fishermen is estimated at several million dollars each year. U.S. tuna fishermen, whose domestic landings of albacore tuna averaged 17,000 tons in the early 1980s, found catch levels falling to 8,000 tons a year late in the decade and only 2,800 tons in 1989.

In addition to the fishery impacts, it is estimated that tens of thousands of marine mammals are drowned in actively fished high seas driftnets each year. This incidental catch, along with the associated entanglement of animals in lost fishing gear and marine debris, is believed to be the largest non-natural cause of marine mammal mortality in the North Pacific today. Another concern is that some 800,000 seabirds are thought to drown each year when they swin into driftnets and become entangled while attempting to feed on fish caught in nets below the surface of the water. Many of the species taken are intended to be protected under the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction and Their Environment, which is in effect between the United States and Japan.

In 1987, Congress enacted the Driftnet Impact Monitoring, Assessment, and Control Act (Driftnet Act). The Driftnet Act mandated that the United States seek agreements with the driftnet fishing nations to provide statistically reliable monitoring of fishing activities and authorized sanctions against fish products of nations that failed to negotiate such agreements. In May 1989, a U.S. negotiating team returned from Japan with tentative monitoring and enforcement agreements under the Driftnet Act. However, concerns were expressed due to the low percentage of observer coverage, including a total lack of coverage for some sectors of the fishery, and the failure of the Japanese to agree to placement of satellite tracking devices onboard their vessels. Discussions resumed, and the Japanese agreed to some clarification of the agreements to address those concerns. Later that summer much stronger agreements were reached with Taiwan and Korea. Both the Taiwanese and the Koreans agreed to equip their vessels with tracking devices and to allow U.S. enforcement officials more effective boarding access. Earlier this year, agreements with all three nations were extended for the 1990 fishing season. As part of that extension, Japan agreed to increased levels of observer coverage and to install satellite tracking devices during 1990. All the vessels in the Japanese fleet are expected to carry tracking devices by August of this year.

At the same time, concerns have increased in the South Pacific about the impact of the albacore tuna driftnet fleet. This fleet is comprised primarily of Japanese and Taiwanese vessels and has grown rapidly in recent years. When regional fishery scientists es-

timated that South Pacific albacore resources could be depleted within two years, New Zealand and the Pacific island nations became alarmed about the potential loss of a valuable fishery resource. In November 1989, the Pacific nations completed development of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific. The Convention calls for a ban on driftnet fishing in the EEZ of each signatory nation and for establishment of an international management regime for albacore.

Also in November 1989, at the request of several members of the Committee, the United States introduced a resolution on driftnet fishing to the United Nations (U.N.) General Assembly. The driftnet resolution was cosponsored by 15 other nations, and supported a moratorium on all high seas driftnet fishing by June 30, 1992. After extensive negotiations with Japan, a revised resolution was adopted by the U.N. General Assembly that calls for a moratorium on driftnet fishing in the South Pacific by 1991, and worldwide by 1992.

OTHER MAGNUSON ACT ISSUES

Moratorium on new fishery entrants

In the 14 years since the passage of the Magnuson Act, one of its goals, the "Americanization" of fisheries within the U.S. EEZ, has been largely achieved. Unfortunately, the elimination of foreign fishing has not always been accompanied by the expected improvement in our ability to conserve and manage our fishery resources. In several fisheries, stocks are at an all-time low, and the fishing effort is higher than at the peak of foreign fishing activities in the 1970s. Many U.S. fisheries appear to be overcapitalized, and the adverse impact of fishing on other living marine resources such as marine mammals, sea birds, sea turtles, and nontarget fish species is a recognized problem. In April 1990, the Commerce Committee received a letter signed by more than 200 well-known fishery scientists calling for an immediate moratorium on entry to all major fisheries of the United States.

North Pacific fisheries

The fisheries in the North Pacific region are presently the largest and most valuable in the United States. In 1989, 8,500,000,000 pounds of seafood worth more than $3,200,000,000 were landed in U.S. ports; the Pacific coast and Alaska contributed about half of those totals. Groundfish stocks such as Alaska pollock, Pacific cod, sablefish, yellowfin sole, and various species of rockfish are especially prevalent in the waters off Alaskan shores.

Americanization of the North Pacific fisheries has been successful beyond expectation. The domestic fishing industry in the Northwest has grown rapidly in recent years, displacing the foreign fleets. This success has brought new problems for the management of fishery resources by the North Pacific Council. Council attention has focused on the need for better management, bycatch monitoring, and fisheries information, including implementation of an effective observer program to collect data for conservation and scientific understanding of the fisheries.

In the past, foreign vessels provided convenient and relatively cost-free platforms from which U.S. observers could collect scientific information. With the elimination of directed foreign fishing in the U.S. EEZ and the decline in joint venture operations, this source of information has become inadequate. While the Councils do not have an explicit statutory mandate to design fisheries research plans requiring U.S. vessels to carry observers, this authority is implicit in the Magnuson Act. The North Pacific Council has developed a limited observer program, but does not have authority to implement an equitable funding mechanism. Explicit Council authority to design and implement a comprehensive research plan, including a funding mechanism, is essential to ensure the integrity of the data needed to manage the fishery.

Regional management councils

Several user groups, including commercial fishermen in the Gulf of Mexico and factory trawlers in the North Pacific, contend that they are not adequately represented on the Councils. They suggest that the imbalances have skewed decisions made by the Councils on regulatory and allocation matters such as gear restrictions and observer requirements. Such concerns have resulted in examination of qualifications required to become a Council member and in discussion of the apportionment of mandatory seats among groups desiring representations on the Councils.

Striped bass

The Secretary currently is in the process of promulgating regulations to place a moratorium on fishing for striped bass in the U.S. EEZ. The regulations are intended to promote striped bass conservation and were authorized by a 1988 Commerce Committee amendment to Public Law 100–589, which reauthorized appropriation under the Atlantic Striped Bass Conservation Act. Only 5 percent of striped bass harvests traditionally have been caught in the EEZ. However, EEZ fishing activities still may impair conservation efforts because significant numbers of spawning adults are taken as the fish migrate towards Chesapeake Bay spawning grounds. In addition, some fishermen have attempted to circumvent State catch limits by claiming that the fish were harvested in Federal waters; imposition of a moratorium would eliminate such practices.

Legislation (S. 2563) has been introduced in the 101st Congress to prohibit striped bass fishing in the U.S. EEZ. Consideration was given to including those provisions in S. 1025 as reported. Committee members endorse the purpose of S. 2563 to strengthen striped bass conservation. However, in light of the pending regulatory action, it was concluded that legislation was not necessary at this time. The Committee intends to monitor the Secretary's progress on the pending matter and to press for completion of the regulations by the September 1990 target date.

ATLANTIC TUNAS CONVENTION ACT OF 1975

The International Commission for the Conservation of Atlantic Tunas (ICCAT) provides international management and regulation of tuna fisheries in the Atlantic Ocean. ICCAT was established

under an international convention in 1966, in response to increasing exploitation and overfishing of Atlantic tuna stocks. The objective of ICCAT is to recommend measures for maintaining harvests of tuna and other migratory species such as marlin and swordfish. The recommendations are based on the best scientific information available, and are implemented and enforced by each member nation. Among the measures recommended by ICCAT are minimum size requirements for yellowfin, bluefin, and bigeye tunas, and quotas on bluefin catches in the Western Atlantic. The Committee anticipates that ICCAT soon will focus attention on measures to control international swordfish harvests.

ATCA provides domestic regualtory and administrative mechanisms for U.S. compliance with ICCAT. That Act calls for appointment of three U.S. Commissioners and establishment of an Advisory Committee. Under ATCA, the Secretary has promulgated regulations establishing fishing seasons, quotas, gear restrictions, enforcement procedures, and licensing and reporting requirements. The existing authorization of appropriations for ATCA provides for such sums as may be necessary; it expired at the end of FY 1989.

FISHERMEN'S PROTECTIVE ACT

The Fishermen's Guaranty Program of the Fishermen's Protective Act provides compensation to U.S. fishermen for losses incurred if a foreign nation seizes a vessel for violating foreign fishing regulations which are not recognized as valid by the United States. Reimbursable expenses include the actual costs due to vessel confiscation, loss of fish, or loss of income. To participate, fishermen must enter into an agreement and pay fees for coverage. The authorization for this section of the Fishermen's Protective Act expired on October 1, 1989.

ANADROMOUS FISH CONSERVATION ACT

The Anadromous Fish Conservation Act was enacted in 1965 for the purpose of managing, conserving and enhancing the Nation's anadromous fishery resources, including those of the Great Lakes and Lake Champlain. Anadromous fish are those species which live in marine waters during their adult lives, then return to freshwater rivers to spawn. That Act establishes the only comprehensive Federal grants program designed to protect and enhance U.S. anadromous fish resources. Among the species covered are salmon, striped bass, walleye, shad, sturgeon, and steelhead trout, all of which contribute significantly to commercial and recreational fisheries in 32 coastal and Great Lakes states. Appropriations for FY 1989 were authorized at $8,000,000.

CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

For the Western Pacific, after lengthy negotiations, the South Pacific Tuna Treaty was completed by the United States and 15 Pacific island nations in 1987. That Treaty provides U.S. tuna fishermen with a limited number of fishing licenses in exchange for annual payments to the island nations. While the Treaty has been successful in resolving conflicts over U.S. access to over 10 million square miles of tuna resources in the Western Pacific, it does not

address requirements for resource management or scientific assessment.

The Central, Western, and South Pacific Fisheries Development Act provides authority for a program to assess stocks of tuna and other fishery resources in the region, develop gear and harvesting techniques, and evaluate the economic potential of new fisheries. Appropriations for the program have been authorized since 1972. However, no funds have been appropriated for its implementation. A funding level of $5,000,000 was authorized for FY 1988.

INTERJURISDICTIONAL FISHERIES ACT

In 1986, the Interjurisdictional Fisheries Act was enacted to promote and encourage the management of important interjurisdictional fishery resources. These resources include: nearshore fisheries which typically occur in waters under the jurisdiction of one or more States and the Federal Government; fishery resources which migrate between the waters of several States bordering the Great Lakes; or fisheries for which an interstate management plan exists. That Act encourages the management of interjurisdictional fishery resources throughout their range and provides grants to States for research in support of such management. The Act also authorizes emergency grants to states to mitigate the impacts of commercial fishery resource disasters. Authorization of appropriations expired in FY 1989 and totalled $7,850,000 for that fiscal year.

LEGISLATIVE HISTORY

Since the beginning of the 101st Congress, the full Committee and the National Ocean Policy Study have held five hearings on Federal marine fisheries programs. Two days of hearings were held on May 17 and 18, 1989, to assess the health of U.S. fishery resources, trends in the fishing industry, and the effectiveness of Federal fishery management. The environmental threat posed by the foreign driftnet fleet operating in the international waters of the Pacific was examined in detail. On July 6 and 7, 1989, field hearings were held in Anchorage, AK and Seattle, WA to discuss management issues in the North Pacific. Finally, a hearing was held on July 20, 1989 to look at tuna fisheries throughout the Pacific, Atlantic, and the Gulf of Mexico and to evaluate ongoing efforts to manage those fisheries.

S. 1025 was introduced by Senator Kerry on May 17, 1989. In addition, several other bills amending the Magnuson Act and related fishery legislation were introduced in the Senate or passed by the House of Representatives and referred to the Committee. On May 22, 1990, the Committee considered an amendment in the nature of a substitute to S. 1025 in open executive session. The substitute broadened S. 1025 as introduced to address concerns identified at the hearings and to incorporate other legislative proposals regarding marine fisheries into a single bill. During the executive session, the Committee agreed to three amendments to the subtitute. The first was offered by Senator Inouye to change the juridical position on tuna. The second was offered by Senators Stevens, Packwood, Gorton, Kasten, Inouye and Rockefeller to revise the Driftnet Act Amendments of 1990, allow the North Pacific Council to assess an

industry-wide fee for funding a comprehensive observer program, require adjustments to fishing times for weather closures, and extend the authorization of appropriations from FY 1993 to FY 1995. The third amendment, offered by Senator Breaux, eliminated as unnecessary a provision requiring that bycatch in the shrimp fishery be considered a conservation engineering priority. The Committee then ordered the bill reported favorably, as amended, without objection.

Summary of Major Provisions

AUTHORIZATION OF APPROPRIATIONS

[Dollars in millions]

	Fiscal year—					
	1990	1991	1992	1993	1994	1995
Magnuson Act	76	94	98	102	107	111
Atlantic Tunas Convention Act	1	1	1	1	1	1
Anadromous Fish Conservation Act	8	8	8	8	8	8
Interjurisdictional Fish	7.9	7.9	7.9	7.9	7.9	7.9
Pacific Fishery Development Act	5	5	5	5	5	5

MAGNUSON ACT AMENDMENTS

In addition to extending the authorization of appropriations through FY 1995, the reported bill includes the following amendments to the Magnuson Act:

Tuna management

The reported bill: (1) changes the juridical position to allow the U.S. to exercise sovereign rights over tuna in the U.S. EEZ; (2) calls for strengthened international management of tuna species; and (3) establishes a system for managing domestic fishing for all highly migratory species (tuna, swordfish, billfish, and sharks). On the East Coast where these fisheries extend over five Council regions, the new system would give the Secretary primary authority for fishery management decisions. The Western Pacific Council would retain management authority for highly migratory species in its region.

Driftnets

The bill would ban the use of driftnets longer than 1.5 miles: (1) in the U.S. EEZ; and (2) by U.S. vessels beyond the EEZ. The bill calls upon the Secretary, through the Secretary of State, to negotiate agreements to restrict and monitor the use of driftnets and to pursue an international ban on the use of such wasteful fishing technologies on the high seas. Failure by a foreign nation to comply with international agreements governing driftnet fishing would be treated as a certification under the Pelly Amendment, triggering the President's discretionary authority to embargo fish products from that country.

Council member qualifications

The bill contains several changes regarding selection of Council members. The Secretary would be required to develop criteria for determining whether an individual is qualified to serve on the Council. The Governors then would be expected to use those criteria in selecting nominees to fill Council positions. Service on a Council would be limited to three consecutive terms. Finally, an annual report by the Secretary would be required that: (1) lists the fisheries under the jurisdiction of each Council; (2) assesses whether the makeup of each Council provides fair and balanced presentation of participants in the regional fisheries; and (3) states plans for maintaining or achieving fair and balanced representation on the Councils.

North Pacific research plan

The bill authorizes the North Pacific Council to implement a comprehensive fisheries research plan and establishes a North Pacific fishery observer fund. The purpose of the plan is to provide for effective fishery management in the North Pacific.

Temporary moratorium

The bill provides the Secretary with discretionary authority to establish a temporary moratorium on new entrants to a fishery, if the Secretary determines that overfishing is occurring or is likely to occur. The moratorium could be extended for up to 36 months until conservation and management measures are in place to prevent overfishing.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1025, the Fishery Conservation Amendments of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1025.
2. Bill title: Fishery Conservation Amendments of 1990.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, May 22, 1990.

4. Bill purpose: S. 1025 would reauthorize and amend the Magnuson Fishery Conservation Act and other fisheries statutes. The bill would also require the Secretary of State to conduct an assessment of international agreements related to highly migratory species.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorization of appropriations:					
Specific	115.9	119.9	123.9	128.5	132.5
Estimated	.6	.6	.5		
Total estimated authorization	116.5	120.5	124.4	128.5	132.5
Estimated outlays	79.4	111.1	120.5	126.7	130.8

The costs of this bill would be in budget functions 300 and 370.

Basis of estimate: This estimate is based on assumptions that the bill will be enacted by October 1, 1990 and that the full amounts authorized will be appropriated for each fiscal year. The estimated outlays are based on historical spending patterns.

In total, S. 1025 would specifically authorize appropriations of $116 million for 1991, $120 million for 1992, $124 million for 1993, $129 million for 1994, and $133 million for 1995. Of these amounts, all but $22 million per year would be for programs under the Magnuson Act.

Of the estimated authorization level shown above, $500,000 annually for 1991 through 1993 would be for spending under the Fishermen's Protective Act, which would be reauthorized through 1993. Additionally, based on information provided by the State Department, CBO estimates that the evaluation, report, and negotiations related to highly migratory species required by the bill would cost $100,000 per year during fiscal years 1991 and 1992.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts and Doug Criscitello (226–2860).

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER AND TYPE OF PERSONS REGULATED

Regulations to implement this bill would apply to owners, operators, and crew members of U.S. fishing vessels and of foreign vessels with valid fishing permits issued under the Magnuson Act. The observer requirements and system of fees established under section

118 would apply to fishermen and processors operating in fisheries under the jurisdiction of the North Pacific Council.

ECONOMIC IMPACT

The Department of Commerce will incur some costs in fulfilling federal responsibilities required under this legislation. However, the funding required to carry out these responsibilities is in line with current activity levels and is not expected to have an inflationary impact on the Nation's economy. Costs incurred in administering permit systems or in implementing the North Pacific research plan may be recovered through fees charged to involved vessel owners, vessel operators, and fish processors.

PRIVACY

This legislation will not have an adverse impact on the personal privacy of the individuals involved.

PAPERWORK

Some additional paperwork will be required by the Secretaries of Commerce and State. Annual reports are required to document the progress made toward an international ban on driftnet fishing and to assess Council membership to ensure adequate representation of all user groups.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section cites the short title of the bill as the "Fishery Conservation Amendments of 1990".

TITLE I—AMENDMENTS TO THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SECTION 101.—FINDINGS, PURPOSES, AND POLICY

This section amends section 2 of the Magnuson Act, which provides the findings, purposes, and policy. Section 101(a) of the bill would add a new paragraph to the findings of the Act, stating that the collection of reliable data is essential for the effective conservation, management, and scientific understanding of fishery resources.

Section 101(b) of the bill contains a technical change to the purposes of the Magnuson Act, which is needed to make the purposes conform with the bill's other proposed changes regarding highly migratory species. Subsection (b) also clarifies that the primary purpose of each Council is to serve as a public steward of our Nation's fishery resources.

Subsection (c) of this section would expand the policies of the Magnuson Act, revising two policy statements and adding a new one. The first revision states that conservation and management measures should consider the effects of fishing on immature fish and should avoid unnecessary waste of fishery resources. The second revision emphasizes the need for international efforts to end the use of destructive fishing practices on the high seas. Finally, a

new policy statement would establish the objective of maintaining diverse coastal fisheries and minimizing disruptions in fisheries which support coastal communities.

SECTION 102.—DEFINITIONS

This section of the bill would make several important revisions to the definitions in section 3 of the Magnuson Act, including changes in the definitions of "fish" and "highly migratory species" and the addition of a new definition for "tuna species." Tuna species is defined as the five commercially important tuna species (yellowfin, bluefin, bigeye, albacore, and skipjack). The term "highly migratory species" is changed to include tuna species, swordfish, billfish, and oceanic sharks. The effect of the changes is to provide authority under the Magnuson Act to manage tuna fishing activities within the U.S. EEZ. The revised definitions also are in closer conformity with the terminology used in some international agreements, such as the United Nations Convention on the Law of the Sea. In addition, this section provides definitions for "driftnet fishing," "migratory range," "observer," and "waters of a foreign nation." The definition of "driftnet fishing" excludes gillnets made up of one or more panels that total less than 1.5 miles in length. The total length of nets set in the water by a vessel, without regard to the number of panels or segments deployed, will be used in determining whether the definition applies. Gillnets less than 1.5 miles are excluded because these nets are used extensively in fisheries conducted near shore that are strictly regulated under State and Federal fishery laws. In addition, the use of gillnets by U.S. fishermen may be restricted further under other statutory authorities such as the Marine Mammal Protection Act of 1972.

SECTION 103.—AUTHORITY WITH RESPECT TO HIGHLY MIGRATORY SPECIES

This section of the reported bill amends section 102 of the Magnuson Act, dropping the existing tuna exclusion and thereby extending U.S. exclusive fishery management authority to include tuna species. This section of the bill would revise the language of section 102 of the Magnuson Act to emphasize the importance of international cooperation in conserving and managing highly migratory fish species throughout their range.

SECTION 104.—FOREIGN FISHING

This section amends section 201 of the Magnuson Act by deleting an alternative method for determining the total allowable level of foreign fishing (TALFF). Section 104 of the bill simplifies the method for calculating TALFF, making it that part of the potential fishery yield which is not harvested by U.S. fishermen.

SECTION 105.—EXISTING INTERNATIONAL FISHERY AGREEMENTS

This section of the bill would add a new subsection (e) to section 202 of the Magnuson Act on international fishery agreements. The new subsection focuses on international conservation and management of highly migratory fish like tuna, swordfish, marlin, and sharks. It would require the Secretary of State, in cooperation with

the Secretary, to evaluate existing agreements to determine whether they adequately provide for: (1) effective fishery management, including collection of necessary information and an enforcement system; (2) access to fishing grounds for U.S. vessels; and (3) sufficient funding. The Secretary of State is asked to report to Congress within 1 year regarding the results of the evaluation. The Secretary of State also would be called upon to initiate international negotiations to redress any inadequacies which are identified during the evaluation process.

SECTION 106.—PERMITS FOR FOREIGN FISHING

This section of the bill amends section 204 of the Magnuson Act, which establishes procedures and guidelines for allowing foreign vessels to fish in the U.S. EEZ. Section 106(a) of the bill would establish a new method of determining foreign fishing fees by giving the Secretary (after consultation with the Secretary of State) the authority to establish reasonable fees to be paid by foreign vessels fishing in the EEZ. The purpose of the provision is to simplify the fee establishment process and to provide some flexibility to the Secretary when determining fee levels.

Section 106(b) would repeal section 204(b)(12) of the Magnuson Act dealing with sanctions for foreign permit holders found to be in violation of the Act. The objective of this repeal is not to eliminate sanctions for foreign violators, but, rather, in conjunction with section 114 of the reported bill, to transfer the provisions on permit sanctions to section 308 of the Magnuson Act which deals with civil penalties. Repeal of this paragraph of the Magnuson Act is not intended to affect any enforcement action that is underway on the date of enactment.

SECTION 107.—DRIFTNET FISHING

This section of the bill would establish a new section 206 in the Magnuson Act to address the problem of driftnet fishing on the high seas. Subsection (a) of new section 206 states that the new section incorporates and expands upon the provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987. This subsection also provides a short title, "Driftnet Act Amendments of 1990."

Subsection (b) of new section 206 outlines findings for the new section. The findings state that the widespread use of driftnets threatens living marine resources, that increased efforts are needed to obtain reliable information on driftnet impacts, and that persons fishing on the high seas should exercise greater responsibility in conserving marine resources. The findings also recognize recent international action taken to curb driftnet use.

Subsection (c) of new section 206 states three policies for the section: (1) to implement the United Nations-supported moratorium on driftnet use; (2) to support the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and (3) to secure a permanent ban on wasteful and indiscriminate fishing practices on the high seas beyond the EEZ of any nation. The third policy statement expresses the Committee's growing concern about the adverse effects of unregulated fishing beyond the EEZ of any

nation on the world's fishery resources and on stocks that are fully utilized by fishermen operating under coastal nation jurisdiction. The Committee does not intend this policy statement to apply to fishing practices used in fisheries under the jurisdiction of a Council or in fisheries managed through an international agreement to which the United States is a party.

Subsection (d) of new section 206 defines "living marine resources."

Subsection (e) of new section 206 would require the Secretary, through the Secretary of State, to continue negotiations with other nations to implement this section. The subsection establishes several criteria that international agreements must meet, including requirements for satellite tracking devices; reliable monitoring, including observers; boarding by U.S. enforcement officials, and net marking and biodegradability. These criteria reflect provisions currently included in U.S. driftnet agreements and are intended to ensure that future agreements build on what already has been achieved.

Subsection (f) of new section 206 requires the Secretary to report annually on progress in implementing the section, including recommendations and a list of driftnet fishing nations which conduct driftnet fishing operations in violation of international agreements to which the United States subscribes.

Subsection (g) of new subsection 206 states that failure of a foreign nation to comply with international agreements governing driftnet fishing would be treated as a certification under the Pelly Amendment (section 8(a) of the Fishermen's Protective Act of 1967), thus triggering the President's discretionary authority to embargo fish products from that country.

Finally, subsection (h) of new subsection 206 states that the new section would not expand or diminish U.S. sovereign rights.

SECTION 108.—REGIONAL FISHERY MANAGEMENT COUNCILS

This section makes a number of changes to section 302 of the Magnuson Act regarding the Councils. Section 108(a) of the bill concerns the Secretary's authority over a fishery for highly migratory species when such a fishery extends beyond the geographical area of two or more Councils. The provision would apply primarily to management of highly migratory species on the East Coast, where five Councils (New England, Mid-Atlantic, South Atlantic, Gulf, and Caribbean) presently share responsibility for managing fish such as swordfish and billfish. Under subsection (a), the Secretary would retain authority over the management of such a fishery, instead of having it managed jointly by several Councils. This change is not intended to weaken the Council system but to provide more timely and efficient management of fisheries which are national rather than regional in nature.

Section 108(b) of the reported bill would revise the provisions of section 302(b)(2) of the Magnuson Act which outline qualifications for membership on the Councils. This subsection of the reported bill would modify the existing provisions of the Magnuson Act in three principal ways. First, the subsection clarifies the knowledge and experience requirements necessary for appointment as a Coun-

cil member. The Committee expects that individuals who would satisfy such requirements could come from diverse backgrounds including commercial fishing, sportfishing, environmental organizations, or academic and research institutions.

Second, the Secretary is required to promulgate regulations that would establish criteria for assessing whether an individual satisfies the knowledge and experience requirements. In developing the regulations, priority should be placed on ways to identify potential Council members who will become effective public stewards of our fishery resources. Governors would be required to provide an explanation of how each nominee for a Council position meets the criteria established by the Secretary.

Third, section 108(b) of the bill reinforces the existing provisions of the Magnuson Act regarding the Secretary's responsibility to ensure that, to the extent practicable and subject to the statutory membership scheme provided in the Act, each Council's makeup provides fair and balanced representation for all sectors of the regional fishing industry. Toward this end, the Secretary is required to prepare an annual report listing the fisheries under the jurisdiction of each Council, assessing the representation provided by the Council membership, and indicating plans for achieving or maintaining fair and balanced representation.

Section 108(c) of the reported bill amends section 302(b)(3) of the Magnuson Act to restrict individuals from serving more than three consecutive terms on a Council. For purposes of determining the number of terms served by present Council members, terms completed prior to January 1, 1988, would not be counted.

Section 108(d) of the bill amends Magnuson Act section 302(b) to broaden the language regarding compensation for Council members and staff, in order to permit Council staff to be reimbursed for actual expenses when engaged in Council business.

Section 108(e) modifies Magnuson Act provisions (section 302(e)(3)) dealing with transaction of Council business to allow a Council to meet at appropriate times and places in any of the States represented on the Council. The changes would permit a Council, when appropriate, to meet in areas outside of the geographical area of direct concern to the Council. This subsection of the bill also would require the Regional Director of the National Marine Fisheries Service (the Department of Commerce representative on each Council) to submit a statement which explains any disagreement that the Regional Director has regarding Council matters to be transmitted to the Secretary. The purpose of this requirement is to alert the Council early in the regulatory process regarding possible objections by the Secretary which could delay substantially a management decision.

Section 108(f) of the reported bill clarifies that recommendations received from advisory committees and scientific committees under section 302(e) of the Magnuson Act are advisory and not binding in nature. The Councils were established to conserve and manage our nation's fisheries; that authority should not be delegated to advisory committees.

Subsection (g) of this section makes technical changes necessary to conform with other provisions regarding domestic management of highly migratory species.

Subsection (h) would modify section 302(i) of the Magnuson Act which deals with Council responsibilities in addressing fishery habitat concerns. In the case of State or Federal activities that, in the view of a Council, affect the habitat of anadromous species under the Council's jurisdiction, the Council is required to provide timely comments concerning such activity. In addition, the agency to which comments are addressed must provide a full and timely response, including detailed information on mitigation measures being considered by the agency to address the concerns set forth by the Council.

Subsection (i) of this section amends section 302(j)(3) of the Magnuson Act to allow a Council to conduct closed meetings if prior public notice is given. Under existing law, a Council must arrange the publication of a closure notice in appropriate newspapers. The change made by this subsection would allow the Council simply to notify newspapers and leave publication of the notice to the discretion of the journals. This subsection also would allow a Council to conduct a brief closed meeting without prior notification, but only to discuss employment or internal administrative matters.

Section 108(j) adds a new paragraph at the end of section 302(j) of the Magnuson Act to require that a Council allow the public a reasonable opportunity to review and comment on new information provided by government agencies or Council advisory groups before making conservation and management decisions. A Council must give comparable consideration to information offered by the public at the same time.

Section 108(k) of the reported bill adds a new subsection (l) to the end of section 302 of the Magnuson Act. The new subsection authorizes the Secretary to administer an oath to each Council member and person presenting oral statements at Council meetings regarding the truth of such statements. Persons knowingly presenting false information, either oral or written, to the Councils would be subject to criminal penalties. This provision is not intended to intimidate or restrict the public from full participation in the Council process. At the same time, however, individuals who provide information to the Councils have a responsibility to ensure, to the best of their knowledge, that such information is accurate and factual. The Committee intends that the administration of such oath is done in a manner that does not impede the orderly and efficient conduct of Council meetings.

Section 108(l) of the reported bill clarifies that existing fishery management plans for Atlantic highly migratory species would remain in effect unless and until superseded by development of a new plan and implementation of regulations by the Secretary. This applies to all management plans that were in existence as of January 1, 1990, including the Atlantic Billfish Fishery Management Plan.

SECTION 109.—CONTENTS OF FISHERY MANAGEMENT PLANS

This section of the bill amends section 303 of the Magnuson Act, which sets out criteria for fishery management plans. Section 109(a) modifies one existing provision that a fishery management plan must contain and adds three additional required provisions.

The modification would clarify that proposed conservation and management measures must prevent overfishing and promote the long-term health and stability of the fishery. The modification also would make explicit the currently implicit requirement that conservation and management measures be consistent with regulations implementing recommendations by international organizations in which the United States participates, including any quotas, closed areas, or size limits. The first new provision would require that plans include measures to allow adjustment of fishing times to accommodate safety-related closures due to weather or other reasons. The second additional provision would require plans written or amended after January 1, 1991, to specify the type of data needed to conserve and manage the fishery effectively. Such specifications should assist development of Federal research priorities and provide notice to fishermen and processors that additional data-gathering efforts may be needed. Finally, the third new provision would mandate that plans and plan amendments include a statement assessing the likely effects of the plan or amendment on the participants in the fishery to which it applies.

Section 109(b) amends section 303(b) of the Magnuson Act with regard to discretionary provisions for fishery management plans. First, it would expand the current permit and fees provision, allowing plans to require that fishing vessel operators and fish processors—in addition to fishing vessels—obtain a permit from the Secretary. The language addressing fish processors applies only to processors first receiving the fish; thus, a wholesaler, broker, or secondary processor who purchases fish from other processors would not be covered by this provision. Second, this subsection would allow the Councils to require processors to submit data necessary for the conservation and management of a fishery. Third, the subsection would clarify the existing authority in the Magnuson Act for fishery management plans to require that observers be carried on board domestic fishing vessels for conservation and management purposes. Subsection (b) also states that observers would not be placed on vessels, however, if doing so would jeopardize the observer's health or safety, or the safe operation of the vessel.

Section 109(c) of the reported bill amends section 303(d) of the Magnuson Act. The subsection would allow State employees in limited circumstances to gain access to raw data submitted by fishermen and processors under the requirements of the Magnuson Act. This authority already exists for federal officials and Council employees. The change recognizes the cooperative role that states play in conserving and managing many fisheries. This subsection also would add a new sentence to clarify that protection of data confidentiality cannot prevent its use by the Councils or the Secretary for conservation and management purposes.

SECTION 110.—ACTION BY THE SECRETARY

This section of the reported bill amends section 304 of the Magnuson Act dealing with actions of the Secretary with respect to the national fishery management program. Section 110(a) would revise the existing provisions of the Act (section 304(e)) which address fisheries research. The subsection would mandate development of a

5-year strategic plan describing a comprehensive research program which would identify priorities for: (1) providing information needed for fishery conservation and management; (2) supporting conservation engineering; and (3) improving fishery information management systems. The plan would be developed in consultation with scientists and other interested parties, be open to public comment and review, and be updated every three years. The Committee recognizes that conservation engineering could provide substantial benefits to the U.S. shrimp industry in minimizing bycatches of non-target species. The Secretary is encouraged to give careful consideration to such potential benefits in establishing priorities in that area.

Section 110(b) of the reported bill would establish a new section 304(f)(3) in the Magnuson Act, setting out secretarial responsibilities for the management of highly migratory species fisheries which extend over more than one Council region. This subsection of the bill calls upon the Secretary to identify research and information priorities for managing highly migratory species, to prepare and amend fishery management plans, and to work with international organizations to encourage international management efforts.

Management measures adopted by the Secretary under new section 304(f)(3) would be expected to comply with the national standards prescribed in section 301 of the Magnuson Act. In developing such measures, the Committee expects the Secretary to conduct public hearings as specified in Magnuson Act section 302. In addition, management measures developed under the new section would be required to: (1) be consistent with applicable international agreements; (2) not increase or decrease any quota of fish received by the United States under such an agreement; and (3) take into account traditional U.S. fishing practices. The purpose of these requirements is to encourage development of effective international management efforts for highly migratory species.

In particular, the second requirement does not preclude the Secretary from prescribing measures that affect a fishery for which a quota has been established, if such measures are necessary and appropriate for the conservation and management of fishery resources which are not subject to such a quota. Nor would the provision restrict the Secretary from establishing a domestic quota for a highly migratory species for which there is no international quota. The purpose of the third requirement is to ensure that conservation and management measures developed by the Secretary which allocate fishing privileges for highly migratory species are fair and equitable to all fishermen who have traditionally participated in the fishery. Finally, the Secretary is directed to consult with the Secretary of State, the Councils, and international commissioners and advisory groups in implementing the new section.

Section 110(c) of the bill adds a new subsection (g) to section 304 of the Magnuson Act. New subsection (g) would provide the Secretary with discretionary authority to establish a temporary moratorium on new entrants to a fishery, if the Secretary determines that overfishing is occurring or is likely to occur. Fishing vessels which have participated in the fishery at some time during the three-year period preceding such a determination would not be affected. The

moratorium could last for up to 3 years, unless conservation and management measures are put in place to prevent overfishing. The Secretary is required to promulgate regulations to implement the subsection within 1 year of the date of enactment of the bill.

This subsection is designed to give the Secretary of Commerce emergency authority to slow growth in fishing fleets for those regions which have not implemented adequate conservation and management measures to prevent overfishing as defined by 50 CFR 602. The Committee does not intend that this new authority affect the statutory authority of a Council to use properly developed and justified moratoria as management measures for fisheries over which it has jurisdiction. Neither does the Committee anticipate that this new authority would be directed toward fisheries managed through fishery management plans which have regulatory provisions, such as those found in 50 CFR 672 and 675, which are intended to prevent overfishing. The authority provided in new subsection (g) should not be used by the Secretary to substitute the Secretary's preferred method of preventing overfishing for an existing and effective regulatory regime.

SECTION 111.—IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

This section of the reported bill amends section 305 of the Magnuson Act, which addresses implementation of fishery management plans. Section 111(a) makes certain technical and conforming amendments to this section of the Magnuson Act.

Section 111(b) of the bill modifies section 305(d) of the Magnuson Act as it applies to judicial review of regulations promulgated to implement the Act. Under current law, a management plan or regulation only can be challenged in court within 30 days after publication in the Federal Register. However, a substantial period may lapse between the time a regulation to implement a fishery management plan is published and the time action is taken by the Secretary pursuant to the regulation. In many instances, it is only when such an action is taken that participants in the fishery can assess whether a petition for judicial review is necessary. The time lapse between publication of a regulation and Secretarial action may deny individuals the opportunity to challenge regulations at the point in time when they can determine that such a challenge is necessary. The amendments made by this subsection would allow a challenge within 30 days of the time that a Secretarial action is published. Further, the Secretary would be required to file a response to the challenge within 30 days unless he can show good cause for an extension of the response period. Finally, the subsection provides for expedited consideration of a petition for judicial review.

SECTION 112.—STATE JURISDICTION

This section of the bill revises section 306(c) of the Magnuson Act that establishes terms for allowing fish processing by a foreign vessel within the internal waters of a state. First, this section would require that the application for a processing permit from a foreign vessel include information regarding the species that will be processed. Second, this section of the bill would impose an addi-

tional condition on the governor of a state who is considering an internal waters processing application from a foreign vessel. If the application involves a fishery which occurs in the waters of more that one state or in the waters of a state and in the EEZ, the governor would be required to consult with the appropriate Council and Marine Fisheries Commission and consider comments received from the governor of any other state before approving the application. The purpose of the required consultation is to ensure that approval of such an application does not cause development of excess processing capacity in the fishery.

SECTION 113.—PROHIBITION OF CERTAIN ACTS

This section of the reported bill amends section 307 of the Magnuson Act, which defines actions which are unlawful under the Act. Section 113(a) of the bill amends the existing law to add prohibitions on: (1) stealing, removing, damaging, or tampering with fishing gear owned by another person that is not lost or abandoned, if such an act is done knowingly and without authorization; (2) forcibly assaulting, opposing, intimidating, or interfering with an observer; (3) fishing with driftnets (defined as gillnets 1.5 miles or greater in length) by any vessel within the U.S. EEZ and by U.S. vessels beyond the EEZ; and (4) stripping pollock of its roe and discarding the flesh of the pollock.

Section 113(b) of the bill adds a new provision to section 307 of the Magnuson Act concerning the violation of international fishery agreements between the United States and other nations. Under the new provision, fishing by a U.S. vessel in the waters of a foreign nation in a manner which violates an international fishery agreement with that nation would be treated as a violation of the Magnuson Act. However, the applicable terms of the agreement and implementing regulations must be published in the Federal Register prior to the violation.

SECTION 114.—INCREASED CIVIL PENALTY

This section of the reported bill amends section 308 of the Magnuson Act regarding civil penalties, by increasing the maximum civil penalty for a violation of the Act to $100,000. In addition, this section of the bill would give the Secretary explicit authority to suspend or revoke fishing and processing permits issued to U.S. citizens and foreign nationals for violations. However, the Secretary would be required to consider extenuating circumstances before imposing such sanctions.

SECTION 115.—CRIMINAL OFFENSES AND PENALTIES

This section amends section 309 of the Magnuson act, which deals with criminal offenses. Section 115(a) of the bill would make assault on an observer a criminal offense. Section 115(b) would raise the maximum criminal penalty to $200,000, bringing the size of criminal penalties into conformity with the proposed increase in size of the maximum civil penalty.

SECTION 116.—CIVIL FORFEITURES

Section 116 amends section 310 of the Magnuson Act and would establish a new rebuttable presumption designed to facilitate enforcement of laws and regulations relating to anadromous species. The revised language makes it a rebuttable presumption that any anadromous fish found on-board a fishing vessel is of U.S.-origin, if the vessel is located within the migratory range of anadromous fish stocks of the United States.

SECTION 117.—ENFORCEMENT

This section of the bill amends section 311(e) of the Magnuson Act and would expand the uses which can be made of fines, penalties, or forfeitures of property resulting from violations of any fishery resource law enforced by the Secretary.

SECTION 118.—NORTH PACIFIC FISHERIES RESEARCH PLAN

Section 118 would add a new section 313 at the end of title III of the Magnuson Act, authorizing the North Pacific Council (in consultation with the Secretary) to develop a fisheries research plan for all North Pacific fisheries except salmon. Subsection (a) of new section 313 establishes the two principal elements of such a plan. First, the plan would require the placement of observers on-board fishing and fish processing vessels and in onshore plants to collect information needed for conservation and management of the fishery. Second, the plan would establish a system of fees to pay for the cost of implementation.

Subsection (b) of new section 313 establishes standards which must be met in order for the Secretary to approve a plan under this section. These standards are intended to ensure that the plan is fair and equitable to all participants in the fishery, and that the cost of implementing the plan is distributed among all those who benefit from the resulting program. The Committee expects that the costs would be assessed against all participants in the groundfish, crab, and halibut fisheries under the Council's jurisdiction. All gear types could be subject to observer coverage under this section and the Committee intends that the safety of observers and fishermen be considered in implementing the plan. Fees assessed would not exceed one percent of the value of fish and shellfish harvested, and would be based on the value of a vessel's harvest prior to any value-added activities such vessel may undertake. The Committee recognizes the difficulty of determining this value absent a documented commercial transaction between independent parties, and expects that the Secretary, after consultation with the North Pacific Council, will develop a standardized value for harvested fish throughout the industry. The level of fees would be determined by the cost of training and placing observers on-board vessels and in shorebased plants, as well as the cost of inputting collected data, but shall not include administrative overhead costs incurred by the Secretary.

Subsection (c) of new section 313 outlines review procedures for the plan including provision for both Secretarial and public review.

Subsection (d) would establish a North Pacific fishery observer fund in the Treasury, for deposit of fees collected under new sec-

tion 313. Amounts in the fund would be available to the Secretary without appropriation or fiscal year limitation only for the purpose of implementing this section.

Subsection (e) of the new section would require the Secretary to assess the feasibility of establishing a risk sharing pool to provide insurance coverage for vessels and owners against civil liability in actions brought by an observer. As an alternative to the risk pool, the Secretary could determine that commercial insurance is available at a reasonable cost.

SECTION 119.—AUTHORIZATION OF APPROPRIATIONS

This section of the report bill amends section 406 of the Magnuson Act to provide authorization of appropriations through FY 1995. Funding levels would be authorized at $77,600,000 in FY 1990, $94,000,000 in FY 1991, $98,000,000 in FY 1992, $102,000,000 in FY 1993, $107,000,000 in FY 1994, and $111,000,000 in FY 1995. The FY 1991 level authorizes funds to restore proposed Administration budget cuts and support Administration initiatives. The authorization also provides funding increases for several purposes, including implementation of the driftnet provisions; expansion of the MARFIN and SEAMAP programs; support for shrimp trawl conservation engineering research; enhanced funding for Council operations and enforcement; and increases for management of Georges Bank fisheries and New England stock depletion research. An inflation factor of 4 percent was used in calculating authorization levels for subesequent years.

SECTION 120.—MISCELLANEOUS TECHNICAL AMENDMENTS

This section corrects a number of technical and grammatical errors in the Magnuson Act.

SECTION 121.—GOVERNING INTERNATIONAL FISHERY AGREEMENT

This section provides Congressional approval for extending the governing international fishery agreement between the United States and East Germany until July 1, 1992. The current agreement expires on July 1, 1990, and the new agreement will not go into effect until it is approved by Congress or until the 60-day mandatory Congressional review period expires.

TITLE II—ATLANTIC TUNAS CONVENTION ACT OF 1975

SECTION 201.—LIMITATION ON APPOINTMENTS OF COMMISSIONS

This section amends section 3(a) of ATCA, which addresses appointment of Commissioners to ICCAT. This section of the bill would require the President to appoint one of the non-government Commissioners from among individuals with knowledge and experience regarding commercial fishing in the Convention area and one from among individuals with knowledge and experience regarding recreational fishing in the Convention area. This section also would establish a 3-year term for Commissioners and limit the time an individual can serve as a Commissioner to no more than two consecutive terms (6 years). The terms of the current ICCAT Commissioners would not be considered in determining eligibility for reap-

pointment, making it possible for the current commissioners to serve for up to two additional terms.

SECTION 202.—TERMINATION OF CURRENT TERMS

This section would terminate the terms of the current Commissioners on June 30, 1991 and require the President to appoint or reappoint individuals to serve as Commissioners before that date.

SECTION 203.—TRAVEL EXPENSES OF COMMISSIONERS

This section amends section 3 of ATCA to add a new subsection (d) at the end. This section of the bill would require the Secretary of State to pay the travel expenses of the U.S. ICCAT Commissioners and authorized advisors in accordance with Federal travel regulations. In addition, it would allow the Secretary to reimburse the Secretary of State for these expenses.

SECTION 204.—TRAVEL EXPENSES OF ADVISORY COMMITTEE

This section amends section 4 of ATCA and would give the Secretaries of Commerce and State the authority to pay the necessary travel expenses of additional members of the advisory committee (other than those covered by section 203 of the substitute) in accordance with Federal travel regulations.

SECTION 205.—SPECIES WORKING GROUPS

This section adds a new section 4A to ATCA to authorize the U.S. ICCAT Commissioners to establish species working groups to advise the Commissioners and the advisory committee regarding conservation and management of any highly migratory species covered under the ICCAT Convention.

SECTION 206.—REGULATIONS TO CARRY OUT COMMISSION RECOMMENDATIONS

This section amends section 6 of ATCA and would require the Secretary to issue regulations to ensure that the United States is in full compliance with all ICCAT recommendations no later than January 1, 1991. Any regulations promulgated to implement ICCAT recommendations would be required, to the extent practicable, to be consistent with fishery management plans prepared under the Magnuson Act. In addition, regulations could: (1) require commercial and recreational fishermen to obtain permits for harvesting species regulated by the ICCAT and to report catch levels; (2) require fishing vessels to carry observers; and (3) impose requirements on U.S. fishermen which may not be required by ICCAT but which may be necessary to obtain scientific data necessary for the conservation and management of species regulated by the Convention. However, such new requirements could not have the effect of increasing or decreasing any allocation of fish made to the United States pursuant to an ICCAT recommendation.

SECTION 207.—AUTHORIZATION OF APPROPRIATIONS

This section amends section 10 of ATCA and would authorize an appropriation of $1,000,000 annually for the U.S. share of ICCAT expenses through FY 1995.

TITLE III—FISHERMEN'S PROTECTIVE ACT OF 1967

SECTION 301.—VESSEL SEIZURE REIMBURSEMENT AUTHORITY

Section 301 reauthorizes section 7 of the Fishermen's Protective Act through October 1, 1993.

TITLE IV—ANADROMOUS FISH CONSERVATION ACT

SECTION 401.—AUTHORIZATION OF APPROPRIATIONS

This section amends section 4 of the Anadromous Fish Conservation Act to authorize annual appropriations of $8,000,000 for FY 1990 through FY 1995.

TITLE V—INTERJURISDICTIONAL FISHERIES ACT OF 1986

SECTION 501.—CLARIFICATION OF APPORTIONMENT LIMITATION

This section amends section 304(c)(3)(B) of the Interjurisdictional Fisheries Act to clarify that the enforcement agreements between states and the Secretaries of Commerce or the Interior must pertain to the protection of fishery resources managed under an interstate management plan.

SECTION 502.—FEDERAL SHARE OF ACTIVITIES CARRIED OUT WITH ADDITIONAL APPROPRIATIONS

This section amends 308(b) of the Interjurisdictional Fisheries Act to require that states contribute 25 percent to any project funded under the fishery resource disaster provisions of that Act.

SECTION 503.—AUTHORIZATION OF APPROPRIATIONS

This section authorizes annual appropriations of $7,850,000 for FY 1990 through FY 1995, under section 308 of the Interjurisdictional Fisheries Act.

TITLE VI—CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

SECTION 601.—AUTHORIZATION OF APPROPRIATIONS

This section amends section 7 of the Central, Western, and South Pacific Fisheries Development Act to authorize annual appropriations of $5,000,000 through FY 1995.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 1025.

The Committee considered an amendment in the nature of a substitute. During the debate, Senator Inouye offered an amendment

to the substitute which would make the regulatory authority of the Magnuson Act applicable to foreign and U.S. vessels that fish for tuna. After discussion, the Chairman announced a rollcall vote on the Inouye amendment. On a rollcall vote of 11 yeas and 8 nays as follows, the amendment was agreed to:

YEAS—11	NAYS—8
Mr. Hollings	Mr. Gore
Mr. Inouye	Mr. Kerry
Mr. Ford	Mr. Breaux
Mr. Exon	Mr. Danforth
Mr. Rockefeller	Mr. Packwood
Mr. Benstsen	Mr. Burns
Mr. Bryan	Mr. Gorton
Mr. Robb	Mr. Lott
Mr. Pressler	
Mr. Stevens	
Mr. Kasten	

Following the rollcall vote, two additional amendments were considered. The first was an amendment offered by Senator Stevens on behalf of himself and Senators Packwood and Gorton, dealing with a number of matters, including driftnet fishing, additional authorizations of appropriations, and a North Pacific fisheries research plan. The Stevens amendment was accepted by a voice vote. The second amendment, offered by Senator Breaux to strike from the substitute amendment a provision requiring shrimp bycatch research, was agreed to without objection. The bill as amended was then agreed to and ordered reported by voice vote.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SECTION 2 OF THAT ACT

SEC. 2. FINDINGS, PURPOSES, AND POLICY.

(a) FINDINGS.—The Congress finds and declares the following:

(1) through (7) * * *

(8) The collection of reliable data is essential to the effective convervation, management, and scientific understanding of the fishery resources of the United States.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish [except highly migratory species], within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources;

(2) through (4) * * *

(5) to establish Regional Fishery Management Councils to [prepare, monitor, and revise] *exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of* such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) * * *

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) through (2) * * *

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; *considers the effects of fishing on immature fish and encourages development of measures that avoid unnecessary waste of fish;* and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; [and]

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources[.], *and to secure agreement on a permanent ban on the use of indiscriminate and destructive fishing practices by vessels or persons fishing beyond the exclusive economic zones of any nation; and*

(6) to foster and maintain the diversity of fisheries in the United States, and to minimize disruptions and dislocations in those fisheries upon which coastal communities are substantially dependent to meet their social and economic needs.

SECTION 3 OF THAT ACT

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) through (5) * * *

(6) The term "driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

[(6)] *(7)* The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

[(7)] *(8)* The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals *and birds*[, birds and highly migratory species].

[(8)] *(9)* The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

[(9)] *(10)* The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

[(10)] *(11)* The term "fishing" means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

[(11)] *(12)* The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

[(12)] *(13)* The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

[(13)] *(14)* The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

[(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.]

(15) The term "highly migratory species" means tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (Xiphias gladius).

[(15)] *(16)* The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

[(16)] *(17)* The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(18) The term "migratory range" means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

[(17)] *(19)* The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(20) The term "observer" means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

[(18)] *(21)* The term "optimun," with respect to the yield from a fishery, means the amount of fish—

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

[(19)] *(22)* The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

[(20)] *(23)* The term "Secretary" means the Secretary of Commerce or his designee.

[(21)] *(24)* The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

[(22)] *(25)* The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

[(23)] *(26)* The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(27) The term "tuna species" means the following:
Albacore Tuna—Thunnus alalunga;
Bigeye Tuna—Thunnus obesus;
Bluefin Tuna—Thunnus thynnus;
Skipjack Tuna—Katsuwonus pelamis; and
Yellowfin Tuna—Thunnus albacares.

[(24)] *(28)* The term "United States," when used in a geographical context, means all the States thereof.

[(25)] *(29)* The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

[(26)] *(30)* The term "United States harvested fish" means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.

[(27)] *(31)* The term "vessel of the United States" means—

(A) any vessel document under chapter 121 of title 46 United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46 United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46 United States Code, and used exclusively for pleasure; or

(D) any vessel equipped with propulsion machinery of any kind and used exclusively for pleasure.

(32) The term "waters" of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

SECTION 101 OF THAT ACT

SEC. 101. UNITED STATES SOVEREIGN RIGHTS TO FISH AND FISHERY MANGEMENT AUTHORITY.

(a) * * *

(b) BEYOND THE EXCLUSIVE ECONOMIC ZONE.—The United States claims, and will excercise in the manner provided for in this Act, exclusive fishery management authority over the following:

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to any such species during the time they are found within [any foreign nation's territorial sea or exclusive economic zone (or the equivalent), to the extent that that sea or zone is recognized by the United States.] *any waters of a foreign nation.*

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

SECTION 102 OF THAT ACT

[SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES.

The sovereign rights and exclusive fishery management authority asserted by the United States under section 101 over fish do not include, and may not be construed to extend to, highly migratory species of fish.]

SEC. 102. HIGHLY MIGRATORY SPECIES.

The United States shall cooperate directly or through approriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout their range, both within and beyond the exclusive economic zone.

SECTION 201 OF THAT ACT

SEC. 201. FOREIGN FISHING.

(a) through (c) * * *

[(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) As used in this subsection—

[(A) The term "base harvest" means, with respect to any United Stats fishery, the total allowable level of foreign fishing during the 1979 harvesting season.

[(B) The term "harvesting season" means the period established under this Act by the Secretary during which foreign fishing is permitted within a United States fishery. For purposes of this subsection, a harvesting season is designated by the calendar year in which the last day of the harvesting season occurs, regardless whether fishing is not permitted on that day due to emergency or other closure of the fishery.

[(C) The term "calculation factor" means, with respect to each United States fishery, 15 percent of the base harvest.

[(D) The term "reduction factor amount" means, with respect to each United States fishery, for any harvesting season after the 1980 harvesting season—

[(i) an amount equal to 15 percent of the base harvest for that fhisery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 75 percent of the calculation factor;

[(ii) an amount equal to 10 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the United States in the designated preceding harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent, of the calculation factor; or

[(iii) an amount equal to 5 percent of the base harvest for the fishery, if, in addition to the level of harvest by vessels of the Unitred States in the designated previous harvesting season for the fishery, such vessels harvest, in one or more harvesting seasons, not less than 50 percent, but less than 75 percent of the calculation factor.

[For purposes of this paragraph, the term "designated preceding harvest season" means—

[(I) until a reduction factor amount is first achieved under this paragraph with respect to the fishery concerned, the 1979 harvesting season, and

[(II) after such amount is first achieved, the most recent harvesting season in which a reduction factor amount was achieved.

[(E) The term "annual fishing level" for any United States fishery during any harvesting season after the 1980 harvesting season is the base harvest for the fishery reduced by—

[(i) an amount equal to the reduction factor amount for that harvesting season; and

[(ii) an amount equal to the increased level of harvest by vessels of the United States over the level achieved by such vessels in the 1979 harvesting season for the fishery.

[(F) The term "United States fishery" means any fishery subject to the exclusive fishery management authority of the United States.

[(2) The total allowable level of foreign fishing, if any, with respect to any United States fishery for each harvesting season after the 1980 harvesting season shall be—

[(A) the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with the provisions of this Act (other than those relating to the determination of annual fishing levels), or

[(B) the annual fishing level determined pursuant to paragraph (3) for the harvesting season.

[(3) For each United States fishery, the appropriate fishery management council, on a timely basis, may determine and certify to the Secretary of State and the Secretary the annual fishing level for that fishery for each harvesting season after the 1980 harvesting season.

[(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e), may allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

[(A) the making available of such portion (or any part thereof) during that harvesting season is determined to be detrimental to the development of the United States fishing industry; and

[(B) such portion or part will be available for harvest in the immediately succeeding harvesting season, as determined on the basis of the best available scientific information;

then such portion or part may be allocated for use by foreign fishing vessels in such succeeding harvest season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with

the Secretary of State and on the basis of any recommendation of any appropriate fishery management council.]

(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this Act.

(e) through (j) * * *

SECTION 202 OF THAT ACT

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS.

(a) through (d) * * *

(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

(C) equitable agreements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

(2) REPORT.—The Secretary of State shall, within twelve months after the date of enactment of this subsection, report to the Congress on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified.

(3) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

[(e)] *(f)* NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to [a exclusive economic zone] *an exclusive econom-*

ic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

* * * * * * *

SECTION 204 OF THAT ACT

SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) * * *

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) through (3) * * *

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit—

(A) through (B) * * *

(C) a copy or a summary of the application to the appropriate [council] *Council*.

(5) through (9) * * *

[(10) FEES.—

[(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation.

[(B) Unless subparagraph (C) applies, the fees imposed under subparagraph (A) shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act during each fiscal year the same ratio as the aggregate quantity of fish harvested fishing vessels within the exclusive economic zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year.

[(C) If the Secretary, in consultation with the Secretary of State, finds that any foreign nation receiving an allocation under section 201(e)—

[(i) is harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or

[(ii) is failing to take sufficient action to benefit the conservation and development of United States fisheries;

the fees imposed under paragraph (A) for the next fiscal year shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act during that fiscal

year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone during such preceding year. If the Secretary, in consultation with the Secretary of State, finds, at any time during a fiscal year in which fees calculated under this subparagraph are in effect with respect to a foreign nation, that the conditions requiring that calculation no longer exist, the fees imposed under this paragraph with respect to that nation for the remainder of the fiscal year shall be calculated under subparagraph (B).

[(D) Before the end of each fiscal year, the Secretary, in consultation with the Secretary of State, shall review, based on the criteria established in subparagraph (C)(i) and (ii), the performance of every nation receiving an allocation under section 201(e) and provide written notice to the Congress of his findings and reasons therefor before the end of the fiscal year.

[(E) For purposes of this paragraph, the total cost of carrying out the provisions of this Act includes, but is not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excludes costs for observers covered by surcharges under section 201a(i)(4).

[(F)(i) The amounts collected by the Secretary under this paragraph (except the amounts referred to in clause (ii) shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(c)) for so long as such funds exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.

[(ii) The Secretary shall deposit into the general fund of the United States Treasury the difference between the amounts collected under subparagraph (C) and the amounts that would have been collected had that subparagraph not been enacted.]

(10) FEES.—

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatory to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

(11) * * *

[(12) SANCTIONS.—

[(A) If any foreign fishing vessel has been used in the commission of any act prohibited by section 307, or if the owner or operator of the vessel has committed such an act,

the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue, the Secretary shall—

[(i) revoke such permit, if any, issued for the vessel under this subsection with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

[(ii) suspend such permit for the period of time deemed appropriate;

[(iii) deny a permit under this subsection to the vessel; or

[(iv) impose additional conditions and restricitons on the approved application of the foreign nation involved and on any permit issued under that application.

Any permit which is suspended under this subparagraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

[(B) The Secretary may temporarily deny or suspend the permit of any foreign fishing vessel pending the outcome of any administrative proceeding respecting a violation of section 307 of this Act if the Secretary determines that—

[(i) based upon information available to the Secretary, there are reasonable grounds to believe that the vessel has been used in the commission of such violation;

[(ii) immediate suspension of fishing privileges would serve the purposes of this Act; and

[(iii) either—

[(I) the violation presents a serious threat to the public interest,

[(II) the violation presents a serious threat to the achievement of any purpose or policy of this Act, or

[(III) the owner or operator of the vessel has been involved in a prior violation of this Act.

In applying this subparagraph—

[(I) the Secretary must notify the vessel owner of the proposed denial or suspension and give the owner a reasonable opportunity, not longer than 10 days from service of notice, to respond in writing or otherwise;

[(II) if a permit is deneid or suspended under this subparagraph, any administrative proceeding respecting the violation at issue must be held as promptly as possible; and

[(III) if another permit application is pending for such vessel on or after the date of the violation, the Secretary need not act on that application before deciding whether or not to deny or suspend temporarily a permit under this subparagraph.]

(c) * * *

SECTION 206 OF THAT ACT

[SEC. 206. TRANSITIONAL PROVISIONS.

[(a) DEFINITION.—For purposes of this section, the term "governing international fishery agreement" does not include any governing international fishery agreement other than a governing international fishery agreement approved by the Congress pursuant to section 2 of the Fishery Conservation Zone Transition Act, or pursuant to any amendment to such section 2 if the effective date of such amendment is not later than February 28, 1977.

[(b) ACTION BY COUNCILS.—Section 204(b)(5) shall not apply to any application submitted by a foreign nation pursuant to a governing international fishery agreement for permits authorizing fishing during 1977 by vessels of that nation within the fishery conservation zone or for anadromous species or Continental Shelf fishery resources beyond such zone, but each appropriate Council may prepare and submit comments to the Secretary on such application—

[(1) if the application has been received by the Council on or before the date of the enactment of this section, within 7 days after such date; or

[(2) if the application is received by the Council from the Secretary of State after such date of enactment, within 7 days after the date on which the Council receives the application.

The provisions of the Federal Advisory Committee Act shall not apply to the actions of any Council in preparing such comments.

[(c) PERMITS.—Until May 1, 1977, the requirement in section 204(a) that foreign fishing vessels have on board a valid permit issued under section 204 shall not apply in the case of any foreign fishing vessel for which a permit is issued under an application to which subsection (b) applies. The failure of any such vessel to comply with such requirement before such date shall not be deemed to be a violation of section 307(1)(A).

[(d) PERMIT FEES.—Until May 1, 1977, the requirement in section 204(b)(11), regarding the payment of applicable fees before foreign fishing permits are issued, may be waived by the Secretary with respect to permits to be issued under any application to which subsection (b) applies if the Secretary is satisfied that the foreign nation which made the application will pay the applicable fees before such date. Any permit issued under the waiver provided by this subsection shall expire on May 1, 1977, if the Secretary does not receive on or before such date the applicable fees for the permit.]

SEC. 206. DRIFTNET FISHING.

(a) SHORT TITLE.—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the "Driftnet Act Amendments of 1990".

(b) FINDINGS.—The Congress finds that—

(1) the continued widespread use of long driftnets beyond the exclusive economic zone of any nation is an indiscriminate and wasteful fishing method that poses a threat to living marine re-

sources of the world's oceans and in particular the South and North Pacific, including the Bering Sea;

(2) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished driftnets and in driftnets that are lost, abandoned, or discarded;

(3) Increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of driftnet fishing on living marine resources;

(4) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of driftnets beyond the exclusive economic zone of any nation;

(5) the nations of the South Pacific have agreed to a moratorium on the use of long driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

(6) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing beyond the exclusive economic zone of any nation.

(c) POLICY.—It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

(2) support the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

(3) secure a permanent ban on the use of indiscriminate and wasteful fishing practices, such as driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) DEFINITION.—As used in this section, the term "living marine resources" includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

(e) MONITORING AND ENFORCEMENT AGREEMENTS.—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement the findings, policy, and provisions of this section. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(2) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species,

marine mammals, sea turtles, and sea birds entangled or killed by driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(3) officials of the United States have the right to board and inspect for violations of the agreement any driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

(4) all catch landed or transshipped at sea by driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

(5) time and area restrictions are imposed on the use of driftnets in order to prevent interception of anadromous species;

(6) all driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(7) all driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(8) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(9) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of driftnets beyond the exclusive economic zone of any nation.

(f) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

(1) describing the steps taken to carry out the purposes of this section, and in particular subsection (b) of this section;

(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plan for further action;

(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation; and

(5) a list of the nations that conduct, or authorize their nationals to conduct, driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing driftnet fishing to which the United States is a party or otherwise subscribes.

(g) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (f)(5), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

(h) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.

SECTION 302 OF THAT ACT

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) ESTABLISHMENT.—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(1) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States *(except as provided in section 304(f)(3))*. The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(2) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States *(except as provided in section 304(f)(3))*. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(3) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States *(except as provided in section 304(f)(3))*. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(4) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the

fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States *(except as provided in section 304(f)(3))*. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(5) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States *(except as provided in section 304(f)(3))*. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(6) through (8) * * *

* * * * * * *

(b) VOTING MEMBERS.—(1) * * *

[(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable and experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction.

[(B) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the state regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy. The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the required knowledge and experience required by subparagraph (A). If the Secretary determines that any individual is not qualified, he shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

[(C) Whenever the Secretary makes an appointment to a Council, he shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.]

(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or

recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) shall serve for a term of 3

years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. *After January 1, 1988, no member may serve more than three consecutive terms. Any term completed prior to January 1, 1988, shall not be counted in determining the number of consecutive terms served by any Council member.*

(c) * * *

(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS–18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members *and Council staff members* may be reimbursed for actual expenses.

(e) TRANSACTION OF BUSINESS.—

(1) through (2) * * *

(3) Each Council shall meet [in the geographical area concerned] *at appropriate times and places in any of the constituent States of the Council* at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. *The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.*

(f) * * *

(g) COMMITTEE AND PANELS.—

(1) through (2) * * *

(3) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery *(except as provided in section 304(f)(3))* within its geographical area of authority that requires conservation and management and, from time to time, such amendments to each such plan as are necessary;

(2) through (4) * * *

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a) (3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery *(except as provided in section 304(f)(3))* within its geographical area of authority; and

(6) * * *

[(i) FISHERY HABITAT CONCERNS.—Each Council may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Within 45 days after receiving such a comment or recommendation from a Council, a Federal agency must provide a detailed response, in writing, to the Council regarding the matter.]

(i) FISHERY HABITAT CONCERNS.—(1) Each Council—

(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measurs being considered by the agency for mitigating or offsetting the impact of the activity on such habit.

(j) PROCEDURAL MATTERS.—(1) * * *

(2) * * *

(3)(A) Each Council, scientific and statistical committee, and advisory panel—

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested[;].

[and if any meeting or portion is closed, the Council, committee, or panel concerned shall publish ntoice of the closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting.] Subparagraphs (D) and (F) *of paragraph (2)* shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment matters or other internal administrative matters.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee an advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by

private persons; including, but not limited to, procedures for the restriction of [council employee] *Council employee* access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 303(d), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) * * *

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

(k) * * *

(l) PRESENTATION OF FALSE INFORMATION.—(1) Members of the Councils and all other persons who present oral or written statements to any Council regarding any matters before such Council for decision shall be subject to the provisions of section 1001 of title 18, United States Code.

(2) The Secretary is authorized and directed to administer, to members of each Council and to other persons presenting oral statements to meetings of such Council, an oath that such members and other persons will testify, declare, depose, or certificate truly. All persons presenting such oral statements shall be subject to the provisions and penalties of section 1621 of title 18, United States Code.

SECTION 303 OF THAT ACT

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b), or both *to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery*; and

(C) consisent with the national standards, the other provisions of this Act, *regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits,* and any other applicable law;

(2) through (5) * * *

[(6) consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels other-

wise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels; and]

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) include available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery[.]*;*

(8) in the case of a fishery management plan that, after January 1, 1991, is submited to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan; and

(9) include a fishery impact statement, which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on the participants in the fisheries affeced by the plan or any amendment to the plan, if the plan or amendment is submitted to, or prepared by, the Secretary after the date of enactment of the Fishery Conservaton Amendment of 1990.

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

[(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;]

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) through (6) * * *

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the

facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

[(7)] *(9)* assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning andromous fish in the region; and

[(8)] *(10)* prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(d) CONFIDENTIALITY OF STATISTICS.—Any statistic submitted to the Secretary by any person in compliance with any requirement under [subsection (a)(5)] *subsection (a) and (b)* shall be confidential and shall not be disclosed; except—

(1) to Federal employees and Council employees who are responsible for management plan development and monitoring; [or]

(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or

[(2)] *(3)* when required by court order.

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. *Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Council or the Secretary of any statistic submitted in compliance with a requirement under subsection (a) or (b).*

(e) * * *

SECTION 304 OF THAT ACT

SEC. 304. ACTION BY THE SECRETARY.

(a) * * *

(b)(1) A plan or amendment shall take effect and be implemented in accordance with section [305(c)] *305(a)* if—

(A) through (B) * * *

(2) * * *

(3)(A) * * *

(B) through (C) * * *

(D) A revised plan or amendment shall take effect and be implemented in accordance with section [305(c)] *305(a)* if the Secretary does not notify the Council, in writing, by the close of the 60th day after the revised receipt date of his disapproval of the plan or amendment.

(c) PREPARATION BY THE SECRETARY.—(1) * * *

(2)(A) * * *

(B) The [appropriate council] *appropriate Council* must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period

referred to in subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted under subparagraph (A)(ii), may implement such plan or amendment under section [305(c)] *305(a)*.

(3) * * *

(d) * * *

[(e) FISHERIES RESEARCH.—The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish. The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils.]

(e) FISHERIES RESEARCH.—(1) Within one year after the date of enactment of the Fishery Conservation Amendments of 1990, and at least every three years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

(A) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in paragraph (2); and

(B) indicate the goals and timetables for the program described in subparagraph (A).

(2) AREAS OF RESEARCH.—The areas of research referred to in paragraph (1) are as follows:

(A) Research to support fishery conservation and management, including research on the economics of fisheries and biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(B) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize the harvest of non-target species and promote efficient harvest of target species.

(C) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

(3) In developing the plan required under paragraph (1), the Secretary shall consult with relevant Federal agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transporta-

tion of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(f) [MISCELLANEOUS DUTIES] *FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.*—(1) [If] *Except as provided in paragraph (3),* if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

* * * * * * *

(2) * * *

(3)(A) For the purpose of this paragraph, the term "fishing for highly migratory species" means fishing for any highly migratory species that occurs in the exclusive economic zone and beyond and is the subject of a significant fishery within the exclusive economic zone.

(B) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Council: the New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

(C) In accordance with the provisions of this Act and any other applicable law, the Secretary shall—

(i) identify research and information priorities, including observer requirements and necessary data collection and analysis for the conservation and management of highly migratory species;

(ii) prepare and amend fishery management plans with respect to highly migratory species fisheries to which this paragraph applies; and

(iii) work with international entities, such as the International Commission for the Conservation of Atlantic Tunas, for the purpose of encouraging international fishery management measures with respect to fishing for highly migratory species.

(D) Conservation and management measures included within any fishery management plan or amendment prepared under this paragraph shall—

(i) be consistent with any applicable treaty or international agreement to which the United States is a party;

(ii) not have the effort of increasing or decreasing any allocation or quota of fish provided to the United States under such treaty or agreement; and

(iii) takes into account traditional fishing patterns of fishing vessels of the United States.

(E) In implementing the provisions of this paragraph, the Secretary shall consult with—

(i) the Secretary of State;

(ii) commissioners and advisory and working groups appointed under Acts implementing relevant international agreements pertaining to fishing for highly migratory species; and

(iii) appropriate Councils.

(g) TEMPORARY MORATORIUM.—(1) If the Secretary determines that overfishing in a fishery is likely to occur as a result of fishing by vessels in addition to those that have participated substantially in the fishery during the three-year immediately preceding such determination, the Secretary may establish a moratorium that prohib-

its, as of the date of such determination, participation in the fishery by vessels that have not participated substantially in the fishery during such three-year period.

(2) A moratorium established under paragraph (1) shall be in force and effect for 18 months and, if necessary, may be renewed for no longer than one additional 18-month period. The Secretary may cancel the moratorium prior to its expiration if a fishery management plan or amendment has been approved and implemented which includes conservation and management measures that the Secretary determines will prevent overfishing.

(3) The Secretary shall, not later than 12 months after the date of enactment of this subsection, prescribe by regulation criteria for making a determination and establishing a moratorium under paragraph (1).

SECTION 305 OF THE ACT

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT LOANS.

[(c)] *(a) IMPLEMENTATION.*—* * *

[(d) JUDICIAL REVIEW.—Regulations promulgated by the Secretary under this Act, shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.]

(b) JUDICIAL REVIEW.—(1) Regulations promulgated by the Secretary under this Act and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that—

(A) section 705 of such title is not applicable, and

(B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

(2) The actions taken referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 30 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing

at the earliest possible date and shall expedite the matter in every possible way.

[(e)] *(c)* EMERGENCY ACTIONS.— * * *

[(g)] *(d)* RESPONSIBILITY OF THE SECRETARY.— * * *

[(h)] *(e)* EFFECT OF CERTAIN LAWS ON CERTAIN TIME REQUIREMENTS.— * * *

SECTION 306 OF THAT ACT

SEC. 306. STATE JURISDICTION.

(a) through (b) * * *

(c) EXCEPTION REGARDING FOREIGN FISH PROCESSING IN INTERNAL WATERS.—(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if—

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C); and

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing *and the application specifies the species to be processed.*

[(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity to process all of the United States harvested fish from the fishery concerned that are landed in the State.]

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—

(i) consulting with the appropriate Council and Marine Fisheries Commission and

(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) through (4) * * *

SECTION 307 OF THAT ACT

SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) through (H) * * *

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act; [or]

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species Homarus americanus, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan, implemented under this title;

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages[.];

(K) to knowingly steal, remove, damage, or tamper with—

(i) fishing gear owned by another person, which is not lost or abandoned and is located in the exclusive economic zone, or

(ii) fish contained in such fishing gear,

or to attempt to do so;

(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this Act;

(M) to engage in driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation; or

(N) to strip pollock of its roe and discard the flesh of the pollock.

(2) * * *

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the fishery conservation zone, unless the foreign fishing vessel has been issued a permit under section 204 which authorizes the receipt by such vessel of United States harvested fish of the species concerned; [and]

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unsable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating[.]; *and*

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations

issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

SECTION 308 OF THAT ACT

SEC. 308. CIVIL PENALTIES *AND PERMIT SANCTIONS*

(a) ASSESSMENT OF PENALTY.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for civil penalty. The amount of the civil penalty shall not exceed [$25,000] *$100,000* for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) through (f) * * *

(g) PERMIT SANCTIONS.—(1) In any case in which: (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign ation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

SECTION 309 OF THAT ACT

SEC. 309 CRIMINAL OFFENSES.

(a) Offenses.—A person is guilty of an offense if he commits any act prohibited by—

[(1) section 307(1)(D), (E), (F), (H), or (I); or]

(1) section 307(1)(D), (E), (F), (H), (I), or (L); or

(2) * * *

(b) Punishment.—Any offense described in subsection (a)(1) is punishable by a fine or not more than [$50,000] *$100,000,* or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person use a dangerous weapon, engages in conduct that causes bodily injury to *any observer described in section 307(1)(L) or* any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer *or observer* in fear of imminent bodily injury, the offense is punishable by a fine or not more than [$100,000], *$200,000* or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than [$100,000] *$200,000*

(c) * * *

SECTION 310 OF THAT ACT

SEC. 310. CIVIL FORFEITURES.

(a) through (d) * * *

(e) REBUTTABLE PRESUMPTION.—*(1)* For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

(2) For purposes of this Act, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.

SECTION 311 OF THAT ACT

SEC. 311. ENFORCEMENT.

(a) through (d) * * *

[(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—Notwithstanding any other provision of law, after September 30, 1986, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provision of this Act—

[(1) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act with respect to that fish or other property; and

[(2) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act.

Any person assessed a civil penalty for, or convicted of, any violation of any provision of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation concerned.]

(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provisions of this Act or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other fishery resource law enforced by the Secretary with respect to that fish or other property;

(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;

(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

(D) any valid liens or mortgages against any property that has been forfeited;

(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)) or under other provisions of the customs laws, as made applicable by section 310(c) of this Act to seizures made by the Secretary under this Act, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

(2) Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.

(f) * * *

SECTION 312 OF THAT ACT

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS.

* * * * * * *

SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

(a) IN GENERAL.—The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

(b) STANDARDS.—(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observ-

er under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of title 31, United States Code.

(c) ACTION BY SECRETARY.—(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—(1) The Secretary shall review—

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) through (15) * * *

(16) $77,200,000 for the fiscal year ending September 30, 1990.

(17) $94,000,000 for the fiscal year ending September 30, 1991, of which $6,500,000 shall be used for enforcement and $5,000,000 shall be used to increase research and assessment efforts.

(18) $98,000,000 for the fiscal year ending September 30, 1992.

(19) $102,000,000 for the fiscal year ending September 30, 1993.

(20) $107,000,000 for the fiscal year ending September 30, 1994.

(21) $111,000,000 for the fiscal year ending September 30, 1995.

ATLANTIC TUNAS CONVENTION ACT OF 1975

SECTION 3 OF THAT ACT

COMMISSIONERS

SEC. 3. (a) *(1)* The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.

(2) Of the Commissioners appointed under paragraph (1) who are not governmental employees—

(A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and

(B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.

(3)(A) The term of a Commissioner shall be three years.

(B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.

(b) through (c) * * *

(d)(1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the

Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

SECTION 4 OF THAT ACT

ADVISORY COMMITTEE

SEC. 4. There is established an advisory committee which shall be composed of—

(1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and

(2) the chairman (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852(a)). Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. [*On approval by the United States Commissioners—*

[*(A) if not more than three members of the advisory committee are designated by the committee to attend any meeting of the Commission, Council, or advisory committee, or of any Panel, each of such members shall be paid for his actual transportation expenses and per diem incident to his attendance; and*

[*(B) in any case in which more than three members are designated by the advisory committee to attend any such meeting, each such member to whom subparagraph (A) does not apply may be paid for his actual transportation expenses and per diem incident to his attendance.*] *The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.*

SPECIES WORKING GROUPS

SEC. 4A. The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working

group shall consist of no more than 7 members of the advisory committee and no more than 4 scientific or technical personnel, as considered necessary by the Commissioner.

SECTION 6 OF THAT ACT

ADMINISTRATION

SEC. 6.(a) * * *

(b) * * *

(c)(1)*(A)* Upon favorable action by the Secretary of State under section 5(a) of this Act on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.

(B) Not later than January 1, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

(C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) * * *

(3) The regulations required to be promulgated under paragraph (1) of this subsection may—

(A) through (G) * * *

(H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section; **[**and**]**

[(I) impose such other requirements and provide for such other measures as the Secretary may deem necessary to implement any recommendations of the Commission.**]**

(I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;

(J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and

(K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention;

except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission.

(4) * * *
(d) * * *

SECTION 10 OF THAT ACT

[APPROPRIATIONS

[SEC. 10. There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal years 1986, 1987, 1988, and 1989 such sums as may be necessary for carrying out the purposes and provisions of this Act including—

[(1) necessary travel expenses of the United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

[(2) the United States share of the joint expenses of the Commission as provided in article X of the convention.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in article X of the Convention, not more than $1,000,000 for each of the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995.

FISHERMEN'S PROTECTIVE ACT OF 1967

SECTION 7 OF THAT ACT

SEC. 7. (a) * * *
(b) through (d) * * *
(e) The provisions of this section shall be effective until October 1, 1989 *October 1, 1993;* except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriations Acts.
(f) * * *

ANADROMOUS FISH CONSERVATION ACT

SECTION 4 OF THAT ACT

SEC. 4. (a) There are authorized to be appropriated to carry out the purposes of this Act not to exceed the following sums:

[(1) $11,000,000 for fiscal year 1980.
[(2) $13,000,000 for fiscal year 1981.
[(3) $15,000,000 for fiscal year 1982.
[(4) $57,500,000 for fiscal years 1983, 1984, 1985, and 1986.
[(5) $7,702,500 for fiscal year 1987.
[(6) $7,920,000 for fiscal year 1988.]
[(7) *(1)* $8,152,500 for fiscal year 1989.
(2) $8,000,000 for each of the fiscal years 1990, 1991, 1992, 1993, 1994, and 1995.

Sums appropriated under this subsection are authorized to remain available until expended.

INTERJURISDICTIONAL FISHERIES ACT OF 1986

SECTION 304 OF THAT ACT

Sec. 304. APPORTIONMENT.

(a) through (b)

(c) LIMITATIONS.—(1) * * *

(2) * * *

(3) For any fiscal year after fiscal year 1988, no State may receive an apportionment under this section for any fiscal year if that State's ratio under the apportionment formula in subsection (b) is less than one-third of one percent, unless the State—

(A) is signatory to an interstate fishery compact;

(B) has entered into an agreement with the Secretary or the Secretary of the Interior under which the personnel, services, and equipment of the State and the Federal agency concerned will be made mutually available for the enforcement of Federal and State laws pertaining to the protection of fishery resources *which are managed under an interstate fishery management plan;*

(C) borders one or more of the Great Lakes; or

(D) has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management or interstate fisheries research program.

(4) through (5) * * *

(d) * * *

SECTION 308 OF THAT ACT

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title $5,000,000 for each of [fiscal years 1987, 1988, and 1989] *the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995.*

(b) ADDITIONAL APPROPRIATIONS.—In addition to the amounts authorized in subsection (a), there are authorized to be appropriated to the Department of Commerce $2,500,000 for each of [fiscal years 1988 and 1989] *the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995,* which shall be available in such amounts as the Secretary may determine appropriate for the purposes of this title; except that—

(1) in providing funds to States under this subsection, the Secretary shall give a preference to those States regarding which the Secretary determines there is a commercial fishery failure or serious disruption affecting future production due to a fishery resource disaster arising from natural or underdetermined causes, and any sums made available under this subsection may be used either by the States or directly by the Secretary in cooperation with the States for any purpose that the Secretary determines is appropriate to restore the fishery affected by such a failure or to prevent a similar failure in the future; [and]

(2) the funds authorized to be appropriated under this subsection shall not be available to the Secretary for use as grants for chartering fishing vessels[.]; *and*

(3) the Federal share of the cost of any activity carried out with an amount appropriated under the authority of this subsection shall be 75 percent of the cost of that activity.

Amounts appropriated under this subsection shall remain available until expended.

(c) DEVELOPMENT OF MANAGEMENT PLANS.—In addition to the amounts authorized under subsections (a) and (b), there are authorized to be appropriated to the Department of Commerce $350,000 for each of [fiscal years 1988 and 1989] *the fiscal years 1989, 1990, 1991, 1992, 1993, 1994, and 1995* to support the efforts of the following interstate commissions to develop interstate fishery management plans for interjurisdictional fishery resources:

(1) through (3) * * *

CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

SECTION 7 OF THE ACT

SEC. 7. There is authorized to be appropriated for the period beginning July 1, 1973, and ending June 30, 1976, the sum of $3,000,000, and for the period beginning July 1, 1976, and ending September 30, 1979, the sum of $4,000,000, and for each of the fiscal years 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, [and 1988] *1988, 1989, 1990, 1991, 1992, 1993, 1994, and 1995* the sum of $5,000,000, to carry out the purposes of this Act. Sums appropriated pursuant to this section shall remain available until expended.

○